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8   **UNITED STATES DISTRICT COURT**

9   **SOUTHERN DISTRICT OF CALIFORNIA**

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11   JESUS VICTOR RODRIGUEZ,   CASE NO. 11-CV-1837-LAB-MDD

12   Plaintiff,   **ORDER GRANTING**
                                                  DEFENDANT'S MOTION FOR
13   vs.   **SUMMARY JUDGMENT**

     CAVALRY PORTFOLIO SERVICES, LLC,
14
                                Defendant.
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16   **I.   Background**

17   Rodriguez alleges that Cavalry Portfolio Services accessed his credit report in

18   violation of the Fair Credit Reporting Act. Cavalry, a debt collection agency, contends that

19   it accessed Rodriguez's report in order to verify his contact information as well as to assess

20   his ability to pay his debts, both of which are "permissible purposes" under the FCRA. Now

21   before the Court is Cavalry's motion for summary judgment.

22   **II.   Legal Standard**

23   Summary judgment is appropriate where "there is no genuine issue as to any material

24   fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.

25   56(c). As the moving party, it is Cavalry's burden to show there is no factual issue for trial.

26   *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet this burden, Cavalry must show

27   that Rodriguez lacks evidence to support his case. *Id.* at 325. If it makes that showing,

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1   Rodriguez must go beyond the pleadings and set forth "specific facts" to show a genuine

2   issue for trial. *Id.* at 324.

3   The Court considers the record as a whole and draws all reasonable inferences in the

4   light most favorable to Rodriguez. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528,

5   531 (9th Cir. 2000). The Court may not make credibility determinations or weigh conflicting

6   evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Rather, the Court

7   determines whether the record "presents a sufficient disagreement to require submission to

8   a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at

9   251–52. Not all alleged factual disputes will serve to forestall summary judgment; they must

10 be both material and genuine. *Id.* at 247–49. "If conflicting inference may be drawn from

11 the facts, the case must go to the jury." *LaLonde v. County of Riverside*, 204 F.3d 947, 959

12 (9th Cir. 2000) (citations omitted).

13 **III. Discussion**

14   Rodriguez alleges that Cavalry pulled his credit report for an improper purpose. He

15 is wrong. A debt collector may access a consumer's credit report in the course of collecting

16 a credit card debt from that consumer. *See, e.g., Huertas v. Galaxy Asset Management*, 641

17 F.3d 28, 34 (3rd Cir. 2011); *Miller v. Rubin & Rothman, LLC*, 2011 WL 4359977 at *4 (D.

18 Minn. Sept. 19, 2011) ("In this circumstance, defendant had reason to believe that pulling

19 the consumer reports in question would aid it in its debt collection efforts...accordingly,

20 defendant had a permissible purpose."); *Miller v. Wolpoff & Abramson, LLP*, 2007 WL

21 2694607 at *11 (N.D. Ill. Sept. 7, 2007). *See also* 15 U.S.C. § 1681b(a)(3)(A).

22   Rodriguez also brings up a new allegation in his opposition to Cavalry's motion for

23 summary judgment: Cavalry did not provide proof that it actually purchased Rodriguez's

24 unpaid debt when it attempted to collect from Rodriguez. However, Cavalry provided a

25 declaration from an employee who had personal knowledge of the transaction. In any

26 case, a plaintiff may not allege new claims in a pleading that were not in its initial

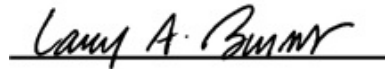27 complaint. *See, e.g.*, *U.S. v. Elias,* 921 F. 2d 870, 874 (9th Cir. 1990); *Boyd v. Wood,*

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1998 WL 476537 at *1 (9th Cir. July 28, 1998); and *Hardin v. Wal-Mart stores, Inc.*, 2010 WL 4924772 at *1 (E.D. Cal. Nov. 29, 2010).

IV. Conclusion

The FCRA and caselaw are clear that a debt collection agency may access a credit report for debt collection purposes. There is no evidence and, thus, really no issue, that Cavalry accessed Rodriguez's report for an improper purpose. Cavalry's motion for summary judgment is therefore **GRANTED**.

IT IS SO ORDERED.

DATED: March 1, 2012

Larry A. Burns

HONORABLE LARRY ALAN BURNS
United States District Judge